

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DION A. TEMPLE,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 12-1435
)	Magistrate Judge Maureen P. Kelly
COMMONWEALTH; and S.C.I.-)	
FAYETTE,)	
Defendants.)	

ORDER

Dion A. Temple (“Plaintiff”) has filed a hand-written civil rights complaint, ECF No. 10, pursuant to 42 U.S.C. §1983,¹ naming only two defendants: the “Commonwealth” which we take to mean the “Commonwealth of Pennsylvania” and the State Correctional Institution at Fayette (“SCI-Fayette”). Plaintiff is currently housed at SCI-Fayette. He complains that monies are being deducted from his inmate account without justification. Plaintiff seeks as relief, an injunction requiring the return of all monies thus taken, and an accounting of all monies taken.

As it now stands, the Complaint would be dismissible pre-service because the Eleventh Amendment bars Plaintiff from suing the Commonwealth of Pennsylvania irrespective of the type of relief requested. See Lavia v. Pennsylvania, Dep’t of Corrections, 224 F.3d 190, 195 (3d Cir. 2000)

¹ Even though Plaintiff does not specifically mention 42 U.S.C. § 1983 in the Complaint, because Plaintiff is seeking to vindicate his constitutional rights (ECF No. 10 at 2, claiming violations of his 14th Amendment rights) and because he does not have a cause of action directly under the Constitution of the United States, a liberal reading of the Complaint requires the court to construe it as one invoking the court’s federal question jurisdiction pursuant to 42 U.S.C. § 1983. See, e.g., Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001) (“a litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.”); Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir 1981) (where a federal statute governing civil action for deprivation of rights provides a remedy, i.e., 42 U.S.C. § 1983, an implied cause of action grounded on the Constitution is not available), *overruling on other grounds as recognized in*, Brandman v. North Shore Guidance Center, 636 F.Supp. 877, 879 (E.D.N.Y. 1986). Hence, the Court construes the current Complaint as alleging a cause of action under Section 1983.

(“the type of relief sought is irrelevant to the question of Eleventh Amendment immunity.”). As for SCI-Fayette, it is simply a building or a series of buildings and has no legal ability to be sued. Ruff v. Health Care Adm’r, 441 F.App’x 843, 845 (3d Cir. 2011) (“The District Court sua sponte dismissed Ruff’s claims as to SCI-Coal Township, SCI-Coal Township’s Medical Staff, and Kathryn McCarthy, for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). This was not error. The District Court properly concluded that Ruff cannot sue SCI-Coal Township or the prison’s medical department itself because these entities are not ‘persons’ under § 1983.”) (citing Fischer v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973)).

Accordingly, Plaintiff is hereby ORDERED to file an amended complaint naming as defendants those who were or are personally involved² in the deducting of monies from Plaintiff’s inmate account. Furthermore, Plaintiff is ORDERED to use the enclosed Civil Rights Complaint form in order to file the Amended Complaint. Plaintiff’s Amended Complaint is due no later than April 1, 2013. Failure to file the Amended Complaint by the required date will result in the case being dismissed for failure to prosecute and/or because the current complaint fails to state a claim upon which relief can be granted.

BY THE COURT:

/s/ Maureen P. Kelly
MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

Date: March 6, 2013

² Ruff v. Health Care Adm’r, 441 F.App’x at 846 (“To be liable under § 1983, a defendant must have some personal involvement in the underlying unconstitutional conduct.”).

cc: Dion A. Temple
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